



A PMG Review of Parliament's Processing of the State Capture Commission Report

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Introduction

Following the release of the final report of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, hereon referred to as the Zondo Commission or State Capture Commission, PMG published a review of Parliament's oversight, pointing to institutional weaknesses prompting Judge Zondo to ask "Where was Parliament" as State Capture gripped the state.¹ This review set the scene and provided a broad overview of parliamentary oversight. We also made findings and recommendations for Parliament to strengthen its oversight function.

Broadly, the Zondo Commission put forward that weaknesses in parliamentary oversight and Executive accountability had, over time, contributed to corruption and maladministration and recommended that Parliament consider reforms to improve its oversight and accountability function. The Commission made ten key recommendations. These included procedures concerned with– House resolutions emanating from oversight activities and responses thereto; Executive reports and submissions to Parliament; Executive attendance; Selection of office-bearers in state institutions; Establishment of an oversight committee over the Presidency; and the Appointment of committee chairpersons.

The final tranche of the State Capture Commission's Reports² was released in June 2022 and the President submitted his response to Parliament in October 2022.³

This review is a follow-up of our 2022 report to give an account of what Parliament has done since Chief Justice Zondo released his findings and recommendations and present our views on how the institution can strengthen its oversight processes, specifically those related to the committee system.

¹ https://static.pmg.org.za/PMG_Zondo_Report.pdf

² [State Capture \(Zondo Commission\) Reports | PMG](#)

³ [RESPONSE BY PRESIDENT CYRIL RAMAPHOSA TO THE RECOMMENDATIONS OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAP](#)

Release of State Capture Commission's Final Report

Even before releasing the final parts of the Commission's reports on 22 June 2022, there was pressure on Parliament from the opposition, civil society⁴ and others to deal with the Commission's recommendations urgently.

Parliament even received legal advice that nothing stops MPs from processing the State Capture Commission reports, especially the sections pertaining to the institution and its oversight role. This went against the views expressed by the Speaker and the Chief Whip of the majority party, who only wanted to deal with this after the President tabled the final report.⁵

The criticism was that Parliament was being reactionary and following the lead of the Executive. In a meeting of the National Assembly Programming Committee (NAPC) in May 2022,⁶ the Democratic Alliance's (DA) chief whip Siviwe Gwarube (the deputy chief whip at the time), asked for Parliament to start work on the parts of the report that pertained to it, as the fourth part also raised Parliament's role during the capture of state-owned entities such as Eskom.

It was later communicated that in respect of matters requiring the urgent attention of Parliament or issues that relate specifically to members, these would be referred to the Joint Standing Committee on Members' Ethics. The Research Unit would analyse all the available reports. Once the final report is issued with the implementation plan, it would be referred to the Rules Committee to make a determination on how the matters should be dealt with by the respective committees or ad hoc committee.⁷

In line with this decision, MPs implicated in part three of the Commission's report were referred to the Joint Committee on Ethics and Members' Interests in May 2022.⁸ The Committee was requested to investigate possible contraventions of the code of ethical conduct and disclosure of Members' interests for all current MPs in light of revelations at the Zondo Inquiry.

The President finally submitted his implementation plan in October 2022, and the next month Parliament began its formal and substantial processing of the Zondo report, five months after the final report was published. The NA Rules Committee convened and adopted a 31-page Implementation Plan to deal with the Commission's recommendations.⁹ Parliament identified structures that must report quarterly to House Chairpersons for Committees in both Houses to ensure that the recommendations achieve the required outcomes. According to the plan, recommendations would be forwarded to the appropriate portfolio committees of the NA and the NCOP, while proposed constitutional changes would be referred to the Joint Constitutional Review Committee. The Rules Committees of both Houses, including the Joint Rules Committee, would play a leading role in processing recommendations relating to parliamentary oversight and accountability. Beyond these three, fifteen committees were identified to oversee the implementation of the President's Plan in response to the Commission's recommendations: Portfolio Committee on Home Affairs, Joint Standing Committee on Intelligence, Joint Standing Committee on Financial Management of Parliament, Portfolio Committee on Justice and Correctional Services, Standing Committee on Public Accounts, Standing Committee on Finance, Portfolio Committee on Police, Portfolio Committee on Public

⁴ [President's response to Zondo report must be followed by decisive action - Corruption Watch](#)

⁵ [MPs can deal with Zondo reports as they unfold — Parliament's legal services](#)

⁶ https://static.pmg.org.za/220505Minutes_5_May.pdf

⁷ https://static.pmg.org.za/220526Minutes_26_May.pdf

⁸ <https://www.iol.co.za/capetimes/news/parliament-refers-two-mps-implicated-in-zondo-commission-report-to-ethics-committee-1a85b806-3008-42b1-bc69-a3b07f0f0390>

⁹ [Processing Zondo Report, Subcommittee Reports | PMG](#)

Enterprises, Portfolio Committee on Mineral Resources and Energy, Portfolio Committee on Trade, Industry and Competition, Portfolio Committee on Small Business Development, Portfolio Committee on Public Service and Administration, Joint Constitutional Review Committee, Standing Committee on Auditor-General and the Joint Committee on Ethics and Members' Interests.¹⁰

To provide context, Parliament's response to the State Capture Commission's recommendations is two-pronged - a response to the recommendations on Parliament's functioning and a response to the recommendations to the Executive, which are addressed in the President's implementation plan. Progress reports on those matters that relate directly to the mandates of the respective Rules Committees were expected to be submitted to these committees on a bi-annual basis. At that same meeting,¹¹ the NA Rules Committee also decided to give designated committees six months to finish their work of processing the recommendations or, at the very least, release a preliminary report but also mindful that other recommendations might have constitutional implications that may only be realised after the 2024 Elections. In all this, the parliamentary administration, led by the Secretary to Parliament, would ensure the requisite support to the respective governance structures to implement this Plan successfully.

Now that the piece has set the overall scene, we now turn to look into the detailed work the relevant structures have done.

Closer view of Designated Structures Processing the Recommendations

Table 1 outlines the Commission's recommendations that are specific to parliamentary oversight and accountability, and the designated structures assigned to process them.

Table 1

State Capture Commission's Recommendation to Parliament	Designated Structure
<i>The establishment of a committee to oversee the president and the Presidency</i>	NA Rules Committee
<i>Enhancing the capacity of Members of Parliament to hold the executive accountable, through the introduction of a constituency-based electoral system</i>	Portfolio Committee on Home Affairs Select Committee on Security and Justice

¹⁰ <https://www.parliament.gov.za/storage/app/media/Docs/atc/4a755e82-cfd5-4ffd-b0f2-a633facc36c3.pdf>

¹¹ [Processing Zondo Report, Subcommittee Reports | PMG](#)

<i>Protecting Members of Parliament from losing party membership and their seats in Parliament, by law</i>	Portfolio Committee on Home Affairs Select Committee on Security and Justice Joint Rules Committee
<i>Improved reporting of the Joint Standing Committee on Intelligence</i>	Joint Standing Committee on Intelligence
<i>Adequate resourcing for parliamentary oversight, including enhancing research and technical assistance to committees and the establishment of an Oversight and Advisory Section</i>	Executive Authority Accounting Officer Secretary to Parliament Joint Standing Committee on Financial Management of Parliament
<i>Improved attendance and reporting of the executive at parliamentary committees, including appropriate consequence management</i>	Joint Rules Committee and Rules Committees of the NA and NCOP
<i>A system to track and monitor the performance of the executive on resolutions of [the Houses of Parliament], where corrective action is proposed</i>	Presiding Officers House Chairpersons for Committees in the NA and the NCOP Secretary to Parliament
<i>The principle of "amendatory accountability" and possible legislation or amendment to Parliament's rules in this regard</i>	Joint Rules Committee
<i>Appointment of chairpersons of committees to include more members of opposition parties</i>	NA and NCOP Rules Committees

<i>Amendment to Parliament's rules regarding appointments by Parliament</i>	Joint Rules Committee and Rules Committees of the NA and NCOP
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[Annexure 1](#) outlines the Commission's recommendations in relation to the Executive and the President's response plan to this. The Annexure also highlights designated structures assigned to process the matters identified.¹²

NA Rules Committee

As aforementioned, Parliament identified structures and designated authorities to deal with the specific recommendations. The bulk of these recommendations were dealt with by the NA Rules Committee's Subcommittee on Review of Assembly Rules, which met on 21 and 25 April 2023 to deliberate and report accordingly.¹³ The full NA Rules Committee later endorsed its decisions. According to the implementation plan,¹⁴ the NA Rules Committee will receive a report on a bi-annual basis on recommendations relating to institutional mechanisms as they pertain to the National Assembly.

1. *The establishment of a committee to oversee the President and the Presidency*

The Commission recommended that Parliament should consider whether it would be desirable for it to establish a committee whose function is, or includes, oversight over acts or omissions by the President and Presidency, which existing portfolio committees do not oversee. In his report, Chief Justice Zondo said: *"It is not correct that everything for which the President is responsible is delegated to a Minister or department outside of the Presidency. Our recent history also shows that the President's conduct is not always subjected to adequate oversight by the existing portfolio committees."* While Parliament has a toolkit of oversight mechanisms, parliamentary committees are the primary platform for robust oversight. This is lacking when holding the Presidency accountable. This is essentially the rationale behind this particular Zondo recommendation.

In terms of Assembly Rule 225, the Speaker, acting with the concurrence of the NA Rules Committee, must establish a range of portfolio committees; assign a portfolio of government affairs to each committee; and determine a name for each committee. Notably, one of the peculiarities of our parliamentary system is that there is no parliamentary committee that oversees the Presidency.

To put this into context, the Presidency has a direct Budget of R601 million – or R608 million including the presidential R4.2 million salary package and R3.6 million for the deputy, according to the 2023/24 Estimates of National Expenditure.¹⁵ Beyond this, the Presidency houses many critical competencies including Intelligence, the National Security Council, infrastructure, climate change, cutting red tape, structural reform unit Operation Vulindlela, the State-owned Entity (SOE) Council and more.

¹² https://static.pmg.org.za/Annexure_1_Parliament_Response.pdf

¹³ [Rules of the National Assembly | PMG](#)

¹⁴ [Parliament's Implementation Plan for Zondo Commission Report](#)

¹⁵ [All about performance – Parliament sidesteps decisions on Presidency oversight committee — and more](#)

Recent developments, particularly the March 2023 Cabinet reshuffle, which saw further expansions in the Presidency by not only the appointment of a Minister of Electricity but also a Minister responsible for planning, monitoring and evaluation, further reignited these calls.

This call for a dedicated committee on the presidency is not new and has been raised by various opposition parties for many years, across different Parliaments. Previously, the Inkatha Freedom Party leader has stated that *“while the budgets of every government department are pored over and questioned before we come here to express our agreement or disapproval, the Presidency's budget is presented as a fait accompli, and we rise in this House with a scant capacity to debate what is being spent, where it is being spent and how it is being spent.”*¹⁶ The Democratic Alliance has pointed out that it is an anomaly that there is currently no effective and regular oversight mechanism over the acts and omissions of the President and the Presidency.¹⁷

On 25 April 2023, the NA Rules Committee partly dealt with this matter, specifically on establishing new ministries in the Presidency and whether portfolio committees should be established to oversee them. On the day, the Committee decided that a parliamentary committee would not oversee Electricity Minister Kgosientsho Ramokgopa as his ministry would not have its own budget and the Minister does not have a dedicated department and is supported by staff in the Presidency.¹⁸

Subsequently, on 4 May 2023, the DA's Kevin Mileham proposed that an ad hoc committee should be established to oversee the Minister of Electricity.¹⁹ When the motion was debated, Mileham said that, given the gravity of the electricity crisis, it was critical that Parliament *“ensure that the minister of electricity is held to the highest standards of accountability and oversight”*. The majority party claimed²⁰ there were enough oversight mechanisms to keep the Electricity Minister accountable and proposed changing the National Assembly's rules to make it harder to propose ad hoc committees. The Mileham motion was not supported. As part of its reasoning for rejecting the motion, the ANC argued that the electricity minister does not work in a formally established department, and does not have its own budget or staff.²¹

The NA supported the establishment of a committee to oversee the Minister of Planning, Monitoring and Evaluation, also situated in the Presidency. This was after the Secretary to the NA proposed that a new portfolio committee be established, which will allow for expanded accountability by the Presidency to Parliament regarding the mandate and functioning of this portfolio. The Minister of Planning, Monitoring and Evaluation has a department with its own budget.²²

As part of dealing with the recommendation on the presidency committee, Parliament commissioned a research paper, prepared by the Parliamentary Budget Office.²³ The paper notes that there is evidence that the structures of the current Parliament oversight mechanisms may be insufficiently robust to achieve adequate monitoring of the executive by Parliament, which has led to a variety of issues expressed in the Zondo Commission findings. The PBO further points out that a Committee on the Presidency could

¹⁶ [Will Parliament Create a Committee to Oversee the Presidency? | PMG](#)

¹⁷ *ibid*

¹⁸ [Establishment of Committee & Clustering of Ministers for Questions: Subcommittee Report | PMG](#)

¹⁹ [DA Debate Speeches: Establishment of an ad hoc committee to oversee new Minister of Electricity.](#)

²⁰ [NA MINI-PLenary SESSIONS \(VIRTUAL\), 04 May 2023](#)

²¹ [ANC rejects DA's proposal for oversight on electricity minister](#)

²² *ibid*

²³ https://static.pmg.org.za/230421Annexure_E_PBO_Briefing_on_Vote_1_Presidency_Oversight_-_November_2022.pdf

become an essential feature in the system of checks and balances of South Africa's democracy should the establishment of the Committee enable Parliament and the wider public to hold Vote 1 (the Presidency) accountable for the impact made in the name of accomplishing their strategic and programme objectives. The PBO concluded that Parliament should strengthen its oversight over the Presidency but that further research would be beneficial.

Parties sitting in the Subcommittee proposed different approaches and recommended three options to the NA Rules Committee as follows- *“Option 1: On the basis of the submission from the PBO, further research was necessary for the Subcommittee to determine the desirability of a Committee on Vote 1, and what its mandate would encompass; Option 2: The Rules Committee establish a committee on Vote 1 forthwith; and Option 3: The Rules Committee endorse the principle that all Executive activities must be subject to examination, including those falling under Vote 1. This endorsement would then precipitate further analysis to ensure that, in respect of Vote 1, any lacunae were closed.”*

There was intense discussion on this matter and ultimately, the decision (not unanimous) was Option 1. Parliament will embark on a study tour in July to look at best practices in other countries, which would then inform the ultimate decision based on the proposals put forward by the Subcommittee.

It is worth pointing out that the Standing Committee on Public Accounts has strengthened its oversight over the Presidency. The Committee had been receiving the reports of the Special Investigating Unit (SIU) into COVID corruption following the Presidential proclamation.²⁴ These progress reports had findings, determinations and recommendations. However, the Committee identified that there was seemingly inaction in implementing recommendations about what the SIU found and determined. Consequence management had not moved. There were investigations that flowed from a proclamation from the President and the reports were handed over to the President. Therefore, the Committee needed to gauge what happened at that point. As a result, the Committee has tasked the Presidency to develop a matrix to track the implementation of recommendations and to provide regular updates to the Committee.²⁵

2. Improving attendance and reporting of the executive at parliamentary committees, including appropriate consequence management

The Commission gave weight to the importance of ensuring that the Executive must be present at requisite parliamentary committee meetings and when they fail to do so, recommended that Parliament has adequate consequence management mechanisms in place to enforce accountability. In the same vein, the Commission recommended that: *“serious consideration should be given by Parliament to amendment to its own rules, with a view to addressing the problem of Ministers who fail to report back to Parliament on what if anything has been done in respect of remedial measures proposed by Parliament or on alternative methods preferred by them to address defective performance highlighted by Parliament.”*

In its 25 April 2023 meeting²⁶ dealing with the recommendations, the NA Rules Subcommittee observed that the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (2004) already made it an offence for any person to refuse a summons, refuse to give evidence or willingly mislead Parliament – such actions being considered contempt of Parliament. At the same time, invoking the Powers and Privileges Act had always been considered a means of last resort, and it was preferred that

²⁴ <https://static.pmg.org.za/200819SIU.pdf>

²⁵ [Presidency on SIU Reports & suspended Public Works DG, with Minister in Presidency | PMG](#)

²⁶ [Establishment of Committee & Clustering of Ministers for Questions: Subcommittee Report | PMG](#)

Parliament and the Executive cooperate before sanctions are pursued. In this regard, the Sixth Parliament had taken measures to facilitate attendance. The Subcommittee, therefore, recommended that: *“the Rules Committee acknowledge that the Sixth Parliament had taken steps to facilitate cooperation between Parliament and the Executive. Notwithstanding these, additional procedures could be developed in due course, and if deemed necessary.”*

From the response above, Parliament seemingly suggests that the institution already has mechanisms in place to deal with non-attendance of the Executive and matters of inadequate reporting.

However, we are of the view that this recommendation is layered. Our observation is that Ministers generally attend Committee meetings. Of course, Ministers are not obligated to attend all meetings, but generally, they attend when big issues are considered, such as annual performance plans and annual reports. They also usually attend when introducing legislation or when a committee has invited them. A review of the PMG website will show that there is a disparity in ministerial attendance between committees. This is largely due to the nature of their portfolio (with some being demanding and having many difficult issues) and even the relationship between the executive authority and the committee. While some committees complain about the lack of ministerial attendance, this is not a widespread issue and does need to be considered on a case-by-case basis. It essentially comes down to each committee clearly developing its own procedures and standards for dealing with problems of ministerial attendance at meetings, as these committees have the power and independence to set their individual standards of what will be tolerated and what will not.

The other aspect of this recommendation is that of adequate reporting. Again, this is a matter difficult for the Rules Committee to consider as it largely hinges on the same nuance outlined above on a case-by-case basis. We have observed that some committees lament that reports or information submitted by the Executive in meetings were not received on time, lacked detail, were a rehash of information previously received or did not speak directly and clearly to the agenda the Committee set. These are, essentially, issues for committees to deal with individually and again, to set the accountability standard, and have clear consequences for the Executive when failing to do as the committee instructed. More on this is touched on in the committee insight section below.

Ministerial attendance during plenary sessions is also worth mentioning. A 2014 Joint Rules Committee decision requires House attendance to be published once a year, but to our knowledge, this has never been published.²⁷

3. *Appointment of chairpersons of committees to include more Members of opposition parties*

As part of measures to strengthen oversight, the Commission recommended the appointment of chairpersons of committees to include more members of opposition parties. The role played by committee chairpersons is influential in determining the extent to which a committee succeeds or fails in its oversight mandate.²⁸ Currently, all parliamentary committees are chaired by ANC MPs, SCOPA being an exception. SCOPA is, by convention (as opposed to a rule), chaired by an opposition member. The Commission highlighted: *“that not all persons appointed as committee chairs have the requisite inclinations or demonstrated capacities. Chief Justice Zondo was therefore of the view that parliamentary oversight may be strengthened if more opposition MPs were permitted to serve as chairpersons. The majority party*

²⁷ [Report of Parliamentary Group on International Relations; Report by Joint Whips' Forum on Attendance Policy of MPs; Report by JSCI on compliance with statutory reporting obligations; Report on legacy issues for 5th Parliament](#)

²⁸ [A Note to the Sixth Parliament: The critical role of Committee Chairperson | PMG](#)

would still exercise a lot of influence because it would still have the majority of the members of the committee.”²⁹

When the NA Rules Committee considered this recommendation, there was strong pushback, with some MPs accusing the State Capture Commission of overreach - for suggesting that Parliament consider allowing opposition parties to chair some committees.³⁰

ANC MPs suggested the party was not in a coalition arrangement in Parliament. Members said the tradition of allowing SCOPA to be chaired by an opposition MP was only a practice. Views were expressed that the recommendation was “a political consideration” and was “noted”.

Ultimately, the NA Rules Committee rejected the proposal.³¹

It is within committees that rigorous oversight is meant to take place, thus the role of the chairperson is instrumental to the effectiveness of a committee. Parliamentary committees are a forum where the pursuit of effective oversight ought to take precedence over party affiliation. Yet, as observed by the Public Affairs Research Institute, this is the exception rather than the norm³². Chairs of committees rarely demonstrate independence and impartiality in executing their duties. Parliamentary protocol is often used as a screen to disguise inaction and avoid pressing issues. The tone of committees is set by their chairs, and too frequently members of the public presenting cases are obstructed through rigid interpretations of parliamentary procedure which ignore or miss the spirit of oversight institutions that limit active debate, scrutiny, and public participation.”

Many witnesses during the Inquiry also attested that the role played by the chairpersons of portfolio committees is influential in determining the extent to which committees succeed or fail in their oversight mandate.

Themba Godi, a former SCOPA chair, says that having an opposition member chair a committee “*has an obvious advantage as the Chairperson is not immediately constrained by narrow party considerations, especially the instinct to defend or avoid embarrassing their own party’s Minister.*”³³ Further, he adds that “overfamiliarity and political seniority can be a hindrance if the Chair and government are from the same party. An opposition Chair is immune from the internal party backlash.

We agree with the view that there is no guarantee that oversight will be strengthened if an opposition party chairs a committee. Notwithstanding this, instead of the Rules Committee simply rejecting the recommendation, we felt there were more nuanced and creative ways of exploring implementing this recommendation such as individual committees having opposition members chair some meetings, parts of a meeting or even some subcommittee meetings, where no decisions are taken. We have observed larger political parties often give additional speaking time to smaller parties and make an effort to include them in committee structures. This approach recognises the multi-party nature of the institution and can be explored in respect of chairing committees.

²⁹ [State Capture Commission Report, Part VI Volume II, page 396](#)

³⁰ [Establishment of Committee & Clustering of Ministers for Questions; Subcommittee Report | PMG](#)

³¹ *ibid*

³² https://pari2.wpenginpowered.com/wp-content/uploads/2022/10/20221004_PARI_CASAC_SCC_Conference_Report_v0.3_DP21.pdf

³³ [How Are SCOPA Chairpersons Elected Nationally and Provincially? :: People's Assembly](#)

4. *A system to track and monitor the performance of the executive on resolutions of [the Houses of Parliament], where corrective action is proposed*

One of the primary practical problems to which various witnesses who appeared before the Commission drew attention was the absence of a parliamentary system to “track and monitor” implementation or non-implementation by the Executive of the corrective action proposed in reports adopted by Parliament. The Commission suggested that the Executive had not always taken account of parliamentary resolutions and reported thereon, and therefore recommended Parliament take steps to address this.

Notably, both Houses are routinely asked to decide on matters brought before them, such as recommendations from committee oversight reports. Once adopted, these recommendations become House resolutions.

Accountability demands that the Executive respond to Parliament to report on remedial actions taken. This was said more than two decades ago by the Corder Report on Oversight and Accountability.³⁴

The matter of a tracking and monitoring system for tabled recommendations and resolutions has been raised repeatedly long before the Zondo Commission. If one searches through the PMG website, there are numerous instances of MPs lamenting the lack of a standard “tracking” system. One such recent instance would be during a Portfolio Committee on Sports, Arts and Culture meeting where DA Member, Mr Tsepo Mhlomo, questioned the tracking of committee recommendations. He asked how this was being done, considering that there had been a prior trend where the Department would not implement the recommendations.³⁵ Another case would be during a Portfolio Committee on Transport meeting where ANC Member, Ms Regina Lesoma said the Committee needed to develop a tracking tool for its recommendations in order not to repeat them.³⁶

The NA Rules Committee has indicated that some challenges with the implementation or otherwise of resolutions originate within Parliament, not only with monitoring but with the technical nature of decisions themselves.³⁷ Consequently, reforms would have to address these. The Committee identified the following as a basis for new rules: Recommendations emanating from committee activities should be substantiated and specific (e.g. include time-frames) and relate to a matter within the purview of the Assembly; The Speaker to maintain a record of resolutions and, in the event of a delay, liaise with the Leader of Government Business (LOGB). As a last resort, legal actions could be considered; and the Speaker to report to the Rules Committee possibly once a year on the status of responses. In the case of Executive reporting: The Executive is to report to Parliament on measures emanating from resolutions within the time-frames prescribed or, in the event no time-frames have been given, it could be 60 days; In the event of a delay, a Minister to inform the Speaker of the reasons and provide a reasonable time frame within which a full report can be provided; and The LOGB to submit an annual report to the Speaker on the status of Executive compliance with resolutions, for inclusion in the Speaker’s report to the Rules Committee.

Parliamentary committees, very broadly speaking, do good work producing detailed reports with considered recommendations related to various engagements with the Executive such as meetings and oversight visits - this is in effect, oversight in action. This work is rendered useless if the recommendations are not followed up. Parliament and committees cannot depend on the goodwill of the

³⁴ Ibid.

³⁵ [Intangible Heritage Convention; Committee Budget Vote Report | PMG](#)

³⁶ <https://pmg.org.za/committee-meeting/36779/>

³⁷ <https://pmg.org.za/committee-meeting/36745/>

Executive to respond - this simply must be enforced on the part of the institution. This ought to be a basic part of Parliament's oversight architecture.

As we pointed out in our 2022 report, oversight is a continuum, a cycle requiring constant follow-through, so oversight is ineffective without a clearly set out system for follow-through. While each committee would be responsible for tracking its own recommendations, the overarching standard system must be stipulated. It might prove prudent for committees to have quarterly meetings to review reports tabled during the quarter – while some do this, it is not a standardised process. Standardising these processes removes discretion and vagueness.³⁸We reflect on this further in the Committee Insights section below.

5. *Amendments to Parliament's rules regarding appointments by Parliament*

The State Capture Commission highlighted how the appointment of certain compromised persons to prominent leadership positions within the criminal justice system led to the manipulation of these agencies and to the harmful effects of these politically motivated appointments. It underscored that candidates for public office must be subjected to a high level of public scrutiny and be appointed on merit. The Commission, therefore, recommended that Parliament: Review the necessary legislation to ensure that it provides guidance on fair and objective appointment processes; Develop multi-stakeholder structures to oversee appointment proceedings; Ensure that parliamentary processes are transparent and open and involve the public; Ensure that candidates are tested, inter alia, for integrity and ethics, using objective criteria; and Ensure that the shortlisted candidates are appropriately vetted before recommendation to the Assembly.

In its report, on implementing the recommendations, the NA Rules Subcommittee recognised that the question of legislative review would fall outside its immediate scope but considered that the rules could, however, provide guidance to support proceedings relating to statutory appointments. Possible rules could include that a committee mandated to recommend a candidate for appointment as an office-bearer in a state institution must: Advertise for applications and provide at least two weeks in which to apply; Publish any shortlist as well as the qualifications of those shortlisted before any of those shortlisted may be interviewed by the committee, and invite the public to submit written comments within this time; and Ensure that the shortlisted candidates are appropriately vetted before recommendation to the Assembly.

Currently, all of these are part of Parliament's conventions and practises and embedding them in the Rules will institutionalise and standardise processes.

This concludes the work of the NA Rules Committee in dealing with the Zondo Commission Report.

Portfolio Committee on Home Affairs and the Select Committee on Security and Justice

6. *Enhancing the capacity of Members of Parliament to hold the executive accountable, through the introduction of a constituency-based electoral system*

The Commission recommended that Parliament consider whether introducing a constituency-based electoral system would strengthen oversight. It further recommended that the Constitution be changed to allow for the President to be directly elected.

³⁸ ["WHERE WAS PARLIAMENT?" A PMG review of parliamentary oversight in light of State Capture and the Zondo Report](#)

The Portfolio Committee on Home Affairs and the Select Committee on Security and Justice were tasked with dealing with this recommendation for electoral reform.

The Portfolio Committee on Home Affairs received an update on this recommendation on 13 June as part of its implementation plan to give effect to the Zondo recommendations on parliamentary oversight.³⁹ The Committee was informed that the Electoral Reform Consultation Panel is dealing with this recommendation. The Panel was established by the Electoral Amendment Act. The Act requires the Minister of Home Affairs to appoint an Electoral Reform Consultation Panel in consultation with the Electoral Commission. Appointment to the Panel is subject to the approval of the National Assembly. This process is currently underway.⁴⁰ The Panel will consist of nine members who must table a report on electoral reform recommendations within 12 months of the 2024 National and Provincial Elections. The functions of the Panel are to independently investigate electoral reforms for the National Assembly and Provincial Legislatures. The contemplated investigations would include conducting research and embarking on public consultations. The Panel would be expected to submit three monthly progress reports to the Minister and ultimately submit a final report with recommendations on potential electoral reforms. The final report must contain the advantages, disadvantages as well as financial, legal, and constitutional implications of each recommended option.

This recommendation is, of course, not new. In its 2017 report, the former President Kgalema Motlanthe-led High-Level Panel on the assessment of key legislation and the acceleration of fundamental change, also found that there were glaring weaknesses in the accountability of Parliament to the public, given the indirect linkages between MPs and their constituencies.⁴¹

Building on the work done by the Van Zyl Slabbert Commission⁴² in the early 2000s, the Panel recommended that Parliament amend the Electoral Act to provide for an electoral system that makes MPs accountable to defined constituencies in a proportional representation and constituency system for national elections.

Joint Rules Committee, Portfolio Committee on Home Affairs and the Select Committee on Security and Justice

7. Protecting Members of Parliament from losing party membership and their Seats in Parliament, by law

Linked to the above recommendation, the Commission proposed that Parliament consider whether it would be desirable to enact legislation which protects Members of Parliament from losing their party membership (and therefore their seats in Parliament) merely for exercising their oversight duties reasonably and in good faith.

³⁹ [Committee implementation plan to give effect to Zondo recommendations; DHA response to Congolese Civil society submission to Parliament: Petitions | PMG](#)

⁴⁰ [Nominations: Candidates for appointment to Electoral Reform Consultation Panel | PMG](#)

⁴¹ [REPORT OF THE HIGH LEVEL PANEL ON THE ASSESSMENT OF KEY LEGISLATION AND THE ACCELERATION OF FUNDAMENTAL CHANGE](#)

⁴² [Report of the Electoral Task Team](#)

In its quarterly update published on 9 June 2023, the Portfolio Committee on Home Affairs highlighted that this recommendation would be referred to the abovementioned Electoral Reform Consultation Panel for consideration in its Electoral System Review.⁴³

8. The principle of "amendatory accountability" and possible legislation or amendment to Parliament's rules in this regard

The Commission recommended that Parliament consider whether it supports the principle of "amendatory accountability" and, if it does, whether it would be desirable to give detailed substance to this principle in an Act of Parliament- an Accountability Standards Act to complement the PFMA- along the lines suggested in the Corder report.⁴⁴

Corder stated: "*The obligation to redress grievances by taking steps to remedy defects in policy or legislation can be termed 'amendatory accountability'. It requires an acceptance by Ministers that something has gone wrong, whether or not they are personally culpable*". (Corder 3.32.(ii) and 6.1.(i))⁴⁵

This recommendation is still yet to be dealt with by the Committees.

Parliament has an Oversight and Accountability Model (OVAC),⁴⁶ developed following the Corder report. While parts of the Model find expression in the oversight function, it has never been implemented fully. We suggest committees (as the primary oversight forum), as part of processing the Zondo recommendations, consider how they give effect to the Model in their oversight work. As suggested in our paper last year, we recommend each Committee be workshopped on the Model.

Joint Standing Committee on Financial Management of Parliament

9. Adequate resourcing for parliamentary oversight, including enhancing research and technical assistance to committees and the establishment of an Oversight and Advisory Section

In the State Capture Commission's view, the inadequacy of financial resources is not an adequate explanation for failures of parliamentary oversight noted during the Inquiry, but it is nonetheless a concern.

In his testimony before the Commission in 2021, House Chairperson Cedrick Frolick admitted that Parliament's oversight function was not properly funded. Frolick said with the limited resources made available to committees, "*they have gone very far in what is demanded of them*". "*I can make the statement with confidence that the oversight function of Parliament is not properly funded*," Frolick said at the time.⁴⁷

Over the years, MPs have also expressed concern about the reduced allocations to Parliament. Recently, ANC MP Bheki Radebe lamented that since 2010, government's budget had almost tripled, but

⁴³ <https://cutt.ly/GwrrmFPE>

⁴⁴ [REPORT ON PARLIAMENTARY OVERSIGHT AND ACCOUNTABILITY](#)

⁴⁵ Corder, H., Jagwanth, S. and Soltau, F. 2009. Report on oversight and accountability: Final report on methods for scrutiny of legislation. Available at: <https://pmg.org.za/committee-meeting/2099>

⁴⁶ [OVERSIGHT AND ACCOUNTABILITY MODEL](#)

⁴⁷ [Budget Vote 2: Parliament | PMG](#)

Parliament's had hardly doubled. He would go on to ask how Parliament would execute its duty if it does not have the required budget.⁴⁸

To address this, the Speaker indicated that Parliament officials would therefore have to engage National Treasury on the impending shortfalls in the allocation of the Parliament's budget.⁴⁹ In the Executive's response plan, the President said National Treasury would engage with Parliament to determine the most appropriate way to give effect to the Commission's recommendations on the resourcing of Parliament, specifically with respect to its capacity to hold the Executive to account. As far as we are aware, these discussions are yet to be had.

According to the 2022/23 annual performance plan, the institution's budget baseline was adjusted downward for the Medium Term Expenditure Framework. The following budget reductions were made: R338 million in 2022/23 and R296 million in 2023/24. In its 2023/24 annual performance plan, Parliament further notes that: *"with economic growth now expected to be low over the medium-term, the institution was already compelled to introduce a number of cost-containment measures for the last few years, with budget pressures now noticeable in almost all areas of work. The budget reductions of almost 10% for 2021/22 to 2023/24 will make the funding of Parliament's strategy challenging, requiring cost reductions, cutting of non-essential functions and expenditure, and subsequent reprioritisation of funding and resources."*⁵⁰

The declining budget allocation to Parliament is set against the backdrop of declining budgets in the state as a whole.

As we pointed out in our 2022 report, budget and resources should follow where the priority is. The committees and units dealing with the oversight tools should be prioritised in terms of budgeting and resourcing. By resources, we refer to sufficient staff, researchers, legal advice and other tangibles required. We acknowledge that this is easier said than done, given Parliament's complex machinery, but it simply cannot be that oversight is not as effective as it could have been because of a lack of finances or resources (as was the case with the mineral resource committee's testimony for not initiating an inquiry into state capture involving the Minister).⁵¹

Joint Standing Committee on Intelligence

10. Improved reporting of the Joint Standing Committee on Intelligence

According to the State Capture Commission, the Joint Standing Committee on Intelligence (JSCI) failed to carry out its oversight duties resulting in it contributing "to some extent", to state capture. Chief Justice Zondo found that: *"By failing to properly carry out its oversight role and to heed the call by the country's then-intelligence chiefs, Parliament has, at least to some extent, contributed towards state capture, because its failure to do its job meant that acts of state capture and corruption were allowed to spread and deepen."* The Commission, therefore, recommended that Parliament consider amending section 6(1)

⁴⁸ [Parliament's Budget Vote Debate: Key Highlights \(2022\) | PMG](#)

⁴⁹ [Parliament Budget Speech \(NA Speaker & NCOP Chairperson\), responses by DA, FF+](#)

⁵⁰ https://static.pmg.org.za/Final_2023_2024_Revised_APP_of_Parliament.pdf

⁵¹ ["WHERE WAS PARLIAMENT?" A PMG review of parliamentary oversight in light of State Capture and the Zondo Report](#)

of the Intelligence Services Oversight Act 40 of 1994, to ensure that, before an election, the outgoing JSCI is required to report to Parliament as much as possible on the period preceding the election.

In its response, Parliament did not have much to say on this recommendation. In the institution's Implementation Plan, it was pointed out that all committees are required to prepare a Legacy Report⁵² at the end of a five-year term of Parliament, which is handed over to the next Parliament for consideration, and follow through, mainly on the work of committees of the previous term of Parliament.

Because the Joint Standing Committee on Intelligence sits behind closed doors, and the only insight into its activities is its report on activities to Parliament, it is concerning that, since 2017, the Committee has not met the annual end-of-May deadline for its report.⁵³

The *Daily Maverick's* Marianne Merten has suggested changes to the JSCI's secrecy approach, noting that: "*elsewhere in the world, including Africa, Europe and the US, intelligence committees are more nuanced and many meetings on matters of public interest, including briefings on geo-political dynamics, are open.*"

PC on Ethics and Members' Interests

This Committee dealt with the breaching of the ethics code by current MPs due to the revelations at the Zondo Inquiry.

Parliament's legal division recommended in May 2022 that the Ethics Committee consider whether certain MPs had breached the ethics code.⁵⁴ On 25 May 2023, Secretary to the NA, Mr Masibulele Xaso, announced that three MPs were cleared when he provided an update to the NAPC.⁵⁵ It was announced that House Chairperson Cedrick Frolick, the late Tina Joemat-Pettersson, and Minister Thulas Nxesi's matters had been completed by the Committee and there were no adverse findings on all three of those matters. We await the reports to explain why they were cleared.

Also in March 2023, the Ethics Committee issued reprimands for two MPs - Deputy Minister in the Presidency, Pinky Kekana, and former Mineral Resources Minister, Mosebenzi Zwane. Mr Zwane has also had his pay docked and was suspended from debates for a parliamentary term.⁵⁶

Parliament must ensure that the institution has the investigating capacity and appropriate mechanisms in place to strengthen the Ethics Committee. Adequate and ongoing training of Members must be reinforced. In addition, political parties must, where appropriate, take a stronger line on the retaining of seats for transgressing MPs.

⁵² <https://pmg.org.za/page/LegacyReports>

⁵³ [Joint Standing on Intelligence | PMG](#)

⁵⁴ [Media Release: Processing of State Capture Commission Report by Parliament](#)

⁵⁵ [NA Programme Committee Meeting, 25 May 2023](#)

⁵⁶ [ATC230308: Report of the Joint Committee on Ethics and Members' Interests on the Alleged Contravention of the Code of Ethical Conduct and Disclosure of Members' Interests: Honourable Mosebenzi Zwane, MP | PMG](#)

Overseeing the President's Response Plan

The President's response plan focuses on the recommendations that are directed to the Executive and those that affect its work. Committees of Parliament were tasked with oversight of the Executive implementation plan. Parliament indicated that, where necessary and consistent with the principle of coordinated oversight, committees will confer with each other and joint undertakings will be encouraged, as applicable. In line with this, fifteen committees were identified to undertake this task. The specific matters that they will be overseeing are wide-ranging and include the following: Criminal Investigations and prosecutions; Asset recoveries; Referrals to other state entities, agencies, and executive authorities; Referrals to professional, regulatory, and other bodies; investigations by the Independent Police Investigative Directorate; Companies implicated in state capture; Building the capacity of the criminal justice system; Reforms to prevent future occurrence of state capture; Broader systemic reforms arising from the work of the Commission.⁵⁷

On 23 November 2022, the NA Rules Committee accepted the President's response plan and agreed that the relevant committees would have a deadline of six months to implement the recommendations or at least release a preliminary report on their work.⁵⁸

During an NAPC meeting on 20 April 2023, the Chief Whip of the majority party, Ms Pemmy Majodina, said the NA House Chairperson, together with the programming whip, must assist committees in coming up with a programme to deal with the State Capture report. She emphasised the need for the processing of the report to be integrated with all other routine oversight and legislative work of committees. "*As Parliament, let us try to ensure our committees deal with State Capture reports so that when we end this term we should be done with matters referred to us,*" she added.⁵⁹

The above was rehashed during a 1 June 2023 NAPC meeting⁶⁰, when the NA House chair of committees, Mr Frolick, announced that a workshop of committee chairpersons was held in mid-May wherein the chairpersons had been requested to include the processing of the report in their quarterly programmes. Assurances were given that this was being implemented at the present moment. In the same meeting, the NA Speaker, Ms Nosiviwe Mapisa-Nqakula, agreed that this collective decision would be monitored closely, specifically on how chairpersons were integrating the processing of the report into their work.

From what we have uncovered so far, many committees have not done much work concerning this and we cannot confirm whether they met the deadline. Out of these 15 committees, we have been able to establish that two did submit their quarterly update report, namely the Portfolio Committees on Home Affairs, and Public Service and Administration. Two other committees - Trade, Industry and Competition and Police - met in June to discuss their implementation plans to give effect to Chief Justice Zondo's recommendations.⁶¹

It is worth noting that the nature of many of the matters referred to the identified committees is weighty. They will require systemic and legislative changes, and work done by law enforcement agencies. This means that their processing will be concluded in the next Parliament. As a result, it is important that these

⁵⁷ https://static.pmg.org.za/Annexure_1_Parliament_Response.pdf

⁵⁸ [Processing Zondo Report, Subcommittee Reports | PMG](#)

⁵⁹ [National Assembly Programme Committee, 20 April 2023](#)

⁶⁰ [NA Programme Committee Meeting, 01 June 2023](#)

⁶¹ [Committee Meeting Reports | PMG](#)

matters are tracked, and that there is a proper handover process for the new committees in the Seventh Parliament.

Insights on the Committee System

The committees of Parliament are the primary forum for robust oversight and accountability. In our review last year, we touched on some institutional weaknesses that frustrate effective oversight and how these can be addressed. Some of these points are worth repeating in this section.⁶²

While there are certain recommendations that only particular committees can deal with (e.g. electoral reform), there are a number of recommendations that all committees should really be implementing. In March 2023, during a discussion on the fiscal framework and revenue proposals by the two finance committees, ANC MP Yunus Carrim suggested that each parliamentary committee should be allocated responsibilities to ensure the implementation of the Zondo Commission recommendations.⁶³ In our review last year, we recommended that each committee must be workshoped on the Zondo Commission recommendations and we wish to repeat that call.

When considering the recommendations in totality, there are some complex “big issue” recommendations but also a number of “small quick wins” committees that could begin putting into practice, independently.

An example of such “low-hanging fruit” is the tracking system. Over the years, MPs have lamented in committee meetings a lack of a tracking system to follow up on recommendations and resolutions. While having a standardised, global system in the institution is ideal, there is nothing stopping individual committees from developing their own system. Another creative way of ensuring recommendations and resolutions are acted on is to programme follow-up meetings each term.

Another good start for committees is for them to look at their own resourcing requirements, as Zondo made recommendations on this. As the Sixth Parliament draws to a close, this is an opportune time for committees to consider their resourcing over the past four years and make recommendations for the institution to consider for the Seventh Parliament. Such an exercise would be useful to reveal critical deficiencies in resourcing and the reoccurring issues across committees.

To improve their effectiveness and strengthen oversight, we recommend more committees look into dedicated subcommittees, especially when the committees oversee a large number of entities or the department they oversee has two distinct mandates. So far, we have only seen the Portfolio Committee on Justice and Correctional Services try to somewhat carve out oversight on the Correctional Services component by dedicating Fridays for focused meetings. This is after the Committee in the Fifth Parliament noted that the Correctional Services portfolio suffered when the Justice and Correctional Services ministries were combined in 2014.

Additionally, we highlighted that committee meetings are too often dominated by lengthy presentations and insufficient time is left for robust discussion – form over substance. It would seem at times that the executive exploits this and presentations can run into hundreds of slides with an overload of information.

⁶² ["WHERE WAS PARLIAMENT?" A PMG review of parliamentary oversight in light of State Capture and the Zondo Report](#). Page 14

⁶³ [2023 Fiscal Framework and Revenue Proposals: Committee Report | PMG](#)

While useful and not without value, slides and documentation can easily be provided before a meeting. Ideally, Members should arrive prepared, a high-level summary can be provided by the department or entity accounting in the meeting but emphasis is placed on allowing as much time as possible for robust questioning. If entrenched and carried over to the Seventh Parliament, such practices could strengthen committee oversight.

We maintain that oversight will be strengthened if committees forge relationships with civil society organisations working within their portfolios. Especially given that resources are constrained for committees, soliciting input from civil society and making use of credible media exposés when conducting oversight meetings will broaden and expand the material committees can draw from when conducting oversight. Committees are busy, generally well-oiled machines when conducting regular and routine oversight meetings such as annual and quarterly reports, but it is not in these activities that the “big issues” rear their heads. It is often in media-driven, breaking news cases that the true test of oversight is revealed. The State Capture Commission has demonstrated this.

Concluding thoughts

This write-up has highlighted what Parliament has done since Chief Justice Zondo released his findings and recommendations. Across the political divide, there have been differing views about Parliament’s processing. During Parliament’s Budget Vote debate on 30 May 2023,⁶⁴ Speaker Mapisa-Nqakula said Parliament “*continued to strengthen*” its oversight measures and that Parliament endorsed the recommendations from the State Capture Commission. She said “*The Judicial Commission of Inquiry into State Capture reports reflected on the oversight work done by committees and the Houses.*”

“The Commission, whilst acknowledging some good work done in our committees, identified the need for more investment to support members and to ensure we have the necessary skills and competencies in the administration to improve the oversight mandate of Parliament.

“We endorsed these findings, and Parliament is committed to ensuring the implementation of these recommendations, including those recommendations referred to portfolio and select committees.”

However, opposition MPs differed. DA chief whip Siviwe Gwarube said it is an “*absolute tragedy that the work of the Zondo Commission will never find expression in Parliament*”. “*Not a single recommendation has been adopted and implemented, a year after this report was tabled in Parliament. The ANC has treated the Commission’s recommendations with disdain and hostility.*”⁶⁵

The processes relating to the implementation of the recommendations have only gotten underway so it is not possible to make a definitive assessment of the impact thus far. While much work has gone into identifying structures, reporting mechanisms and other procedural considerations, overall, our sense is the implementation of the Zondo recommendations has been a tick-box exercise and a missed opportunity in some respects. As we tried to point out above, there is a nuance to many of the issues that Parliament did not fully explore. In addition, for this to have any real impact, it needs to be fully embedded in the processes and approach of all committees.

⁶⁴ [Parliament Budget Speech \(NA Speaker & NCOP Chairperson\)](#)

⁶⁵ [‘We did our job’: Speaker Mapisa-Nqakula on Phala Phala as oversight examined | News24](#)

Reflecting on oversight and accountability since the Zondo Commission, broadly speaking, Parliament's performance is mixed in this regard. It would be useful to illustrate this by way of a few examples. Parliament's decision to reject an independent panel's report on the Phala Phala matter has been widely criticised and viewed as another example of oversight failure. The dysfunction in municipalities - which has a profound impact on all citizens - continues with no or minimal impact and intervention from the legislature. The same can be said about a myriad list of problems facing the country. On the opposite end, the legislature's approach to the Thabo Bester matter, the Eskom investigation and deliberations on matters brought forward by civil society are indications of improved oversight.

While there are pockets of progress and excellence, when Parliament fails on the big matters, it overshadows the good work being done. In all this, the real question is whether Parliament would act any differently as an institution if another state capture occurred.

While tools for oversight are important, ultimately, political will to fully use such tools despite the inherent obstacles is paramount- having the necessary tools is one thing, and implementing them is another. On the rare occasion when a scandal is uncovered, opposition members may embrace it enthusiastically. Usually, however, oversight involves mundane work that provides very little of the public profile important to politicians concerned with retaining their seats. Moreover, for members of the majority party, it may involve asking their colleagues in government awkward questions. These and other political disincentives to conducting oversight need to be acknowledged. In response to them, the main incentive must be emphasised: oversight is a critical part of a democratic society committed to effective government and transformation.⁶⁶ Civil society needs to be a vigilant and vocal voice in supporting effective oversight.

⁶⁶ https://www.ndi.org/sites/default/files/1215_sa_ncoprole22001_5.pdf